

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
SANDRA D. KENNEDY
PAUL NEWMAN
BOB STUMP

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2009 MAY -5 A 9:18

AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

MAY - 5 2009

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IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS AGAINST
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**MOTION FOR SUMMARY
JUDGMENT**

1 Charles J. Dains ("Mr. Dains") hereby moves for summary judgment in the above-
2 captioned docket.

3 In his Complaint, Mr. Dains cited Commission Rule R14-2-406(M), which provides as
4 follows:

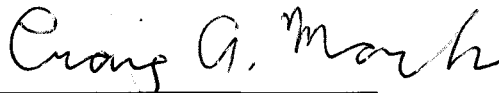
5 All agreements under this rule shall be filed with and approved by the Utilities
6 Division of the Commission. No agreement shall be approved unless
7 accompanied by a Certificate of Approval to Construct as issued by the Arizona
8 Department of Health Services. Where agreements for main extensions are not
9 filed and approved by the Utilities Division, the refundable advance shall be
10 immediately due and payable to the person making the advance. (Emphasis
11 added.)

12 In his complaint, Mr. Dains alleged that Rigby Water Company failed to file with the
13 Commission the Main Extension Agreement with Mr Dains. Mr. Dains claimed that Rule R14-
14 2-406(M) therefore required Rigby Water to immediately pay the entire amount of the
15 refundable advance (\$237,000 – refunds to date) to Mr. Dains.

16 In its April 13, 2009, "Answer to Formal Complaint and Rigby Water Company's Motion
17 to Dismiss" Rigby Water simply ignored Rule R14-2-406(M), its duty to file the MXA, and Mr.
18 Dains' claim based on that rule. Because Rigby Water did not deny the allegation that it failed
19 to file the MXA, it must be taken as admitted. Therefore, in accordance with Rule R14-2-
20 406(M), the entire amount of the refundable advance (\$237,000 – refunds to date) is immediately
21 due and payable to Mr. Dains.

1 WHEREFORE, Mr. Dains asks that the Commission grant its motion for summary
2 judgment and order Rigby Water to immediately pay to Mr. Dains the entire amount of the
3 refundable advance (\$237,000 – refunds to date).

4 RESPECTFULLY SUBMITTED on May 5, 2009.
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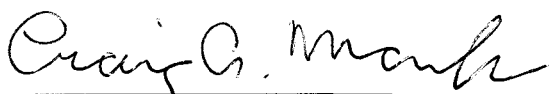
16 Original and 13 copies **filed**
17 on May 5, 2009, with:

18
19 Docket Control
20 Arizona Corporation Commission
21 1200 West Washington
22 Phoenix, Arizona 85007
23

24 Copy **mailed**
25 on May 4, 2009, to:

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34 
Craig A. Marks